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36 \*Applications *Pro Hac Vice* to be  
 37 Submitted

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39 UNITED STATES DISTRICT COURT

40 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

41 CHARLES P. HAGGARTY and GINA M.  
 42 HAGGARTY, on behalf of themselves and all  
 43 others similarly situated,

44 Plaintiffs,

45 v.

46 WELLS FARGO BANK, N.A.

47 Defendant.

48 Case No.: 3:10-cv-02416-CRB

49 [Assigned to the Hon. Charles R. Breyer]

50 **JOINT STIPULATION AND [PROPOSED]**  
**51 ORDER CONCERNING CHANGES**  
**52 TO THE TRIAL DATE, MOTION DATE,**  
**53 DISCOVERY DEADLINES AND**  
**54 BRIEFING SCHEDULES**

1 Pursuant to Civil L. R. 7-12, Plaintiffs CHARLES P. HAGGARTY and GINA M.  
2 HAGGARTY, and Defendant WELLS FARGO BANK, N.A., having met and conferred through  
3 their counsel of record, submit this Joint Stipulation and Proposed Order concerning changes to  
4 the trial date, the briefing and hearing dates for the Motion for Class Certification, the hearing  
5 date for the Motion for Judgment on the Pleadings, and Discovery Deadlines.

6 **Background**

7 Trial in this matter is currently scheduled for October 1, 2012. On June 8, 2012 (filed  
8 early June 9, 2012), the parties agreed to and submitted a stipulated schedule contemplating (a)  
9 that Plaintiffs would file their motion for class certification on June 22, 2012 (with hearing on  
10 August 3, 2012); (b) that fact discovery cutoff and initial expert disclosures would be due on  
11 August 3, 2012; and (c) that Defendant would file its motion for summary judgment on August  
12 3, 2012 (with hearing on September 14, 2012). [See Doc. 79] On June 12, 2012 the Court So-  
13 Ordered the joint stipulation. [See Doc. 80, entered June 14, 2012] Hearing on Defendant's  
14 Motion for Judgment on the Pleadings [Doc. 69] had previously been scheduled for June 22,  
15 2012.

16 Plaintiffs believe that, in light of intervening events, and for the reasons discussed below,  
17 the trial date should be continued to provide adequate time to provide notice to the class before  
18 the beginning of trial in the event the Court certifies the class. Plaintiffs also believe that the  
19 briefing schedule for the class certification motion should be continued for three weeks to allow  
20 Plaintiffs to complete certain discovery that could not be accomplished within the current  
21 schedule and to allow all parties to evaluate and address the impact on class certification of  
22 certain documents identified and produced by Wells Fargo for the first time after Plaintiffs filed  
23 their motion for class certification. This joint stipulation and proposal would allow Plaintiffs to  
24 withdraw the motion for class certification filed on June 22, 2012, and to refile the motion on  
25 July 13, 2012. Plaintiffs contend that as a result of the difficulties completing certain discovery,  
26 discovery deadlines should be extended to allow them time to finalize discovery before expert  
27 reports are due. Defendant does not agree with Plaintiffs' contentions regarding discovery

1 difficulties or the cause of such difficulties, but supports the requested continuances.

2       The parties also request that the hearing on the Motion for Judgment on the Pleadings and  
3 Motion for Class Certification be continued to accommodate scheduling conflicts for counsel  
4 responsible for arguing those motions.

5       The parties are prepared and would request a short status conference if the Court has any  
6 questions or concerns about this request.

7 **Trial Date – Requested Continuance of Two Months.**

8       On June 18, 2012, the Court rescheduled the hearing on Defendant's Motion for  
9 Judgment on the Pleadings from June 22, 2012 to August 3, 2012. At the same time, the Court  
10 also rescheduled the hearing date for Plaintiffs' Motion for Class Certification from August 3,  
11 2012 to August 24, 2012. Trial is presently set for October 1, 2012. Plaintiffs are concerned that  
12 if the Court certifies the class on or after the August 24 hearing date, this will not leave sufficient  
13 time for class notice before the beginning of trial. Even assuming that the Court certified the  
14 class from the bench at the hearing and signed the proposed order submitted by Plaintiffs without  
15 any changes, Plaintiffs do not believe that this would allow sufficient time for the parties to  
16 prepare and obtain Court approval, print the class notice, provide the class with adequate time to  
17 opt-out of the class, and tally and present the opt-out information to the experts and Court before  
the beginning of trial.

18       As discussed in the following section, Plaintiffs believe that continuing the trial would  
19 also allow time in the schedule to complete discovery that otherwise is likely to be incomplete  
20 for the class certification motion and expert reports. Plaintiffs contend that a continuance of the  
21 trial date for two months, to December 3, 2012, would allow the parties to complete discovery  
22 and submit full information to the Court for Plaintiffs' class certification motion and Defendant's  
23 motion for summary judgment. Plaintiffs contend it would also obviate the need for  
24 supplemental expert reports otherwise likely necessary due to the state of discovery, as discussed  
25 below.

26       Defendant does not necessarily agree with each of Plaintiffs' contentions set forth above,  
27 but supports the requested continuance.

**1 Class Certification Briefing Schedule and Discovery Schedule**

2 As contemplated in the joint stipulation and scheduling order entered on the docket on  
3 June 14, Plaintiffs filed their motion for class certification on June 22, 2012. However, due to  
4 the state of written discovery and in light of certain documents identified and produced by Wells  
5 Fargo after the filing of that motion, Plaintiffs contend that they have not had an opportunity to  
6 conduct or complete reasonable discovery prior to the filing of the motion. Specifically,  
7 Plaintiffs contend that they have not had an opportunity to either complete document review or  
8 take 30(b)(6) depositions before the class certification filing date, and that the documents  
9 produced by Wells Fargo on June 26, 2012 have potential impact on the class certification issues  
in the case.

10 Plaintiffs believe the history of the parties' efforts to complete discovery in a timely way  
11 is important. On January 31, 2012, Plaintiffs propounded a significant request for production of  
12 documents. The parties engaged in significant meet and confer that resulted in an agreed  
13 protective order, but a disagreement regarding the timing of the production. Plaintiffs filed a  
14 motion to compel on May 3, 2012 complaining that documents had not yet been produced.  
15 Defendants responded that they had committed tremendous resources to the project, but that,  
16 among other issues, Plaintiffs had an unrealistic expectation of how long the process would take  
17 to produce the large amount of documents requested from Wells Fargo.

18 The discovery dispute was referred to Magistrate Judge Jacqueline Scott Corley who  
19 conducted a conference call with the parties on May 10, 2012. In that conference call with Judge  
20 Corley, the parties agreed to meet and confer regarding a production schedule. During the  
21 following meet and confer sessions, Defendant indicated it would provide weekly rolling  
22 productions with Defendant's final production date being estimated as June 8, 2012. Wells  
23 Fargo did produce documents on a rolling production, starting on May 3, 2012. Wells Fargo has  
24 produced approximately 535,000 pages of non-privileged documents in the litigation to date. Of  
25 this, more than 92% (over 493,000 pages) was produced on June 5, 6, 7 and 8, 2012. An  
26 additional approximate 11,500 pages were produced on June 19 and 22, 2012. Defendant notes  
27 that the bulk of these pages were produced by the day Defendant indicated it would complete its  
28 production, and contends that the June 19 and 22 productions consisted of a small number of

1 documents that had initially been flagged as privileged and some additional servicing notes (2%  
2 of pages produced). Defendant further contends that its conduct in discovery was reasonable  
3 and appropriate at all times, particularly given the breadth of Plaintiffs' requests.

4 Plaintiffs do not assert in this stipulation that the timing and size of the production reflects  
5 anything other than the challenges associated with the size of production. However, Plaintiffs  
6 contend that the speed of the process has not allowed Plaintiffs to perform and complete  
7 necessary discovery before the filing date for the class certification motion. Plaintiffs have felt  
8 the document production needed to be complete before they could take 30(b)(6) depositions.  
9 Those depositions were commenced on June 28, 2012. Under the existing schedule, Plaintiffs  
10 were required to file their motion for class certification prior to the scheduled 30(b)(6)  
11 depositions and therefore were not able to use 30(b)(6) testimony in support of their motion for  
12 class certification (filed on June 22, 2012); under the proposal presented herein, Plaintiffs would  
13 be allowed to withdraw their June 22, 2012 filing and would have the opportunity to use such  
evidence in a new filing.

14 In addition, on June 26, 2012, Wells Fargo identified and produced for the first time two  
15 additional "versions" of the ARM mortgage Notes at issue in this litigation. In the motion for  
16 class certification filed on June 22, Plaintiffs sought certification of a class of borrowers whose  
17 mortgages are (or were as of a specific date) on any of six particular Note "versions," exemplars  
18 of which Wells Fargo previously produced. Wells Fargo takes the position in this litigation that  
19 different Note versions contain varying language and cannot be treated as the same for class  
20 certification purposes. With the introduction, after the filing of Plaintiffs' motion, of two new  
21 Note "versions," Plaintiffs contend they should be afforded a reasonable opportunity to assess  
22 whether they wish to seek certification of a class which also includes borrowers whose Notes  
23 were on those forms. Wells Fargo has not yet issued updated discovery responses sufficient in  
24 Plaintiffs' view to provide Plaintiffs with data reflecting the number loans outstanding on such  
25 Note "versions," the outstanding principal balance on such loans, and the like. Under the  
26 proposal herein, Plaintiffs would be allowed to withdraw without prejudice their motion for class  
27 certification as filed on June 22, 2012, and file a new motion for class certification on July 13,  
28 2012. Other adjustments to the briefing schedule are as noted below. Again, Wells Fargo

1 contends that its conduct has been reasonable at all times and further asserts that the two notes  
 2 produced after filing of Plaintiffs' class certification motion were difficult to locate and made up  
 3 a tiny fraction of its total production.

4 Finally, Plaintiffs also contend that under the existing schedule, the document production  
 5 issues described above will hinder their ability to complete expert disclosures by the present due  
 6 date of August 3, 2012; under the proposal presented herein, the document production issues  
 7 should not present an insurmountable hurdle to timely completion of Plaintiffs' expert  
 8 disclosures.

9 **Hearing Dates for Motion for Judgment on the Pleadings and Motion for Class**

10 **Certification**

11 When the Court rescheduled the hearing date of the Motion for Judgment on the  
 12 Pleadings from June 22, 2012 to August 3, 2012, it created a scheduling conflict for Defendant's  
 13 counsel, Mark Flewelling, who is arguing the motion. Defendant requests, and Plaintiffs do not  
 14 oppose, that the hearing on the motion for judgment on the pleadings be continued from August  
 15 3, 2012 to August 10, 2012.

16 When the Court continued the hearing date on the Motion for Class Certification from  
 17 August 3, 2012 to August 24, 2012, it created a scheduling conflict for Plaintiffs' counsel,  
 18 Andrea Bierstein, who is arguing the motion. Plaintiffs request, and Defendant does not oppose,  
 19 that the hearing on the motion for class certification be continued from August 24, 2012 to  
 20 August 31, 2012.

21 **Parties Proposed Scheduling Changes**

22 The Parties jointly agree to the requested scheduling change. Accordingly, the Parties do  
 23 stipulate and propose the following changes to the current schedule of trial date, hearing for the  
 24 motion for judgment on the pleadings, hearing for the motion for class certification, the pre-trial  
 25 conference hearing, class certification briefing and discovery schedule:

	<u>Present Date</u>	<u>Proposed Date</u>
1. Trial Date	October 1, 2012	December 3, 2012
2. Pre-Trial Conference	September 27, 2012	November 27, 2012

1	3. Hearing on the Motion for Judgment on the Pleadings	August 3, 2012	August 10, 2012
2	4. Class Certification		
3	a. Hearing	August 24, 2012	August 31, 2012
4	b. Plaintiffs' Motion (June 22 Filing to be Withdrawn)	June 22, 2012	July 13, 2012
5	c. Defendant's Opposition	July 11, 2012	August 1, 2012
6	d. Plaintiffs' Reply	July 20, 2012	August 10, 2012
7	5. Fact Discovery Cutoff:	August 3, 2012	August 22, 2012,
8	6. Initial Expert Disclosures:  At the time of disclosure, the disclosing party will provide 3 dates between Aug. 31-Sept. 14 2012 that the disclosed expert is available for deposition.	August 3, 2012	August 31, 2012
9	7. Rebuttal Expert Disclosures:  At the time of disclosure, the disclosing party will provide 3 dates between September 14-28, 2012 that the disclosed expert is available for deposition.	August 17, 2012	September 14, 2012
10	8. Expert Discovery Cutoff:	August 31, 2012	September 28, 2012
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18	IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.		
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21	Dated: June <u>29</u> 2012	Respectfully submitted McCUNE WRIGHT, LLP	
22		By: <u>/s/ Richard D. McCune</u> Richard D. McCune	
23		Attorney for Plaintiffs Charles P. Haggarty and Gina M. Haggarty	
24			
25	Dated: June <u>29</u> 2012	REED SMITH, LLP	
26		By: <u>/s/ Jack R. Nelson</u> Jack R. Nelson	
27		Attorneys for Defendant Wells Fargo Bank, N.A.	
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED:  
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3 DATE: July 3, 2012  
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